

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

PAMELA K. HOLLIDAY,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
the Social Security Administration,

Defendant.

§
§
§
§
§
§
§
§
§
§

Civil Action No. SA-09-CV-685-XR

ORDER ON MAGISTRATE JUDGE’S MEMORANDUM & RECOMMENDATION

On this day, the Court considered the Memorandum and Recommendation of the Magistrate Judge (Docket Entry No. 17). The Magistrate Judge recommended that the Court grant two pending motions to dismiss and dismiss Plaintiff’s claims against three of the four Defendants. Having considered the report, the Court ACCEPTS the Magistrate Judge’s memorandum and recommendation. Defendants’ motions to dismiss (Docket Entry Nos. 10, 14) are GRANTED and Methodist Healthcare Systems, David C. Brown, and Frank K. Kuwamura, III, M.D., are DISMISSED as Defendants.

Background

Plaintiff Pamela K. Holliday sought social security benefits but the Social Security Administration denied her applications, and her agency appeals have been denied.

Beginning in 2002, Holliday was treated by Defendant Frank K. Kuwamura, III, M.D., and admitted to Methodist Healthcare Systems (Metropolitan) for a first cervical (C4-C5) disk fusion with hip graft for a job-related injury. She contracted an infection and seeks to hold the hospital liable for the infection. She claims her attorney, Defendant David C. Brown, mishandled her claims

for social security benefits and alleges that Dr. Kuwamura's acts or omissions in record keeping contributed to the denial of her claims.

Procedural History

Holliday instituted this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) seeking review of the determination of the Social Security Administration, that she is not disabled and, therefore, not entitled to receive disability and supplemental security income ("SSI") benefits. The Magistrate Judge granted Holliday's request for leave to proceed *in forma pauperis*, indicating that Commissioner Michael J. Astrue was the only proper defendant in this case. (Order (Aug. 26, 2009) [Docket Entry No. 2].) Holliday served all the Defendants in spite of the Magistrate Judge's order. Motions to dismiss were filed on behalf of Kuwamura and Methodist Healthcare Systems. The Magistrate Judge issued his memorandum and recommendation on December 9, 2009. (Mem. & Recommendation (Dec. 9, 2009) [Docket Entry No. 17].) Holliday has not objected.

Legal Standard

In reviewing the Magistrate Judge's report and recommendation, the Court must conduct a de novo review of any of the Magistrate Judge's conclusions to which a party has specifically objected. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). As to the portions of the report that are not objected to, the Court needs only to review those portions to determine whether they are clearly erroneous or contrary to law. *Id.*; *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243, 106 L.Ed.2d 590 (1989). A party may serve and file objections to the order within fourteen days. FED. R. CIV. P. 72(a), (b)(2). In this case, Holliday has not objected to the memorandum and recommendation, so the Court evaluates the memorandum and recommendation to determine if it is clearly erroneous

or contrary to law.

Analysis

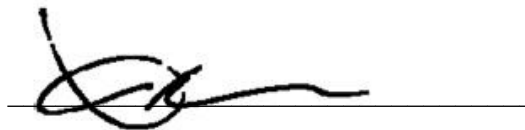
The Magistrate Judge noted that the proper defendant in an appeal of the denial of disability and SSI benefits is the Commissioner of the Social Security. *See* 42 U.S.C.A. § 405(g). No federal statute provides jurisdiction to hear Plaintiff's claims against the hospital, her treating physician, or her attorney in this matter.

Conclusion

The Court hereby ACCEPTS the Magistrate Judge's Memorandum and Recommendation and GRANTS the Motions to Dismiss. It is hereby ORDERED that Methodist Healthcare Systems, David C. Brown, and Frank K. Kuwamura, III, M.D., are DISMISSED as Defendants.

It is so ORDERED.

SIGNED this 4th day of January, 2010.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', is written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE